



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

### **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE AMELIA LUMBER COMPANY, INCORPORATED FOR AMELIA LUMBER EPA ID No. VAD003113438**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and The Amelia Lumber Company, Incorporated for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" or "Site" means The Amelia Lumber Company, Incorporated facility located at 16951 Leidig Street in Amelia County, Virginia.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2,200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
10. "Amelia Lumber" means The Amelia Lumber Company, Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Amelia Lumber is a "person" within the meaning of Va. Code § 10.1-1400.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
16. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.

19. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Amelia Lumber owns and operates the Facility in Amelia County, Virginia. The Facility is a sawing and planing mill; some of the wood products produced are treated with Chromated Copper Arsenate ("CCA"), Copper Azole, or a borate-based preservative. Approximately 95% of wood treatment utilizes Copper Azole. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. At the Facility, Amelia Lumber generates dry waste CCA and CCA-contaminated debris, sludge, washwater and spill cleanup materials, all of which are solid waste. This solid waste is also F035 listed hazardous waste, as described in 40 CFR § 261.31, and is accumulated in containers and tanks at the Facility after its generation.
3. Amelia Lumber submitted a RCRA Subtitle C Site Identification Form to DEQ (received August 18, 1980) that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. DEQ issued Amelia Lumber EPA ID No. VAD003113438 for the Facility. In a subsequent form (received February 9, 2002), Amelia Lumber gave notice as a CESQG of hazardous waste at the Facility.
4. CCA treated lumber is left on a drip pad to dry. According to 40 CFR § 262.34(a)(1)(iii), the drip pad is subject to the requirements of Subpart W of 40 CFR Part 265. The drip pad is sloped to allow washwater from the drip pad to flow into a small sump (the "Sump"), which can overflow into the treatment room. Pursuant to 40 CFR § 265.190(c), the Sump and treatment room are collection devices used in conjunction with the drip pad and are subject to the requirements of Subpart J of 40 CFR Part 265.
5. On October 20, 2008 and December 10, 2008, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations.
6. During the December 2008 inspection, DEQ staff observed that the Facility had shipped offsite four 55-gallon drums of F035 hazardous waste between October 20 and November 3, 2008, two 55-gallon drums of F035 hazardous waste on November 19, 2008, and three 55-gallon drums of F035 hazardous waste on December 8, 2008. As a result, the Facility was subject to the requirements for small quantity generators (SQGs) during the time of the inspections.
7. Based on the October and December 2008 inspections and follow-up information, Department staff made the following observations:

- a. Amelia Lumber had not performed an assessment of the Sump's integrity. The Sump is regulated as a tank system and does not have secondary containment or leak detection; therefore, an integrity assessment is required by 40 CFR § 265.191.
  - b. DEQ inspectors observed that waste CCA in the sump was allowed to overflow into the treatment room. 40 CFR §§ 265.194 (b) and 262.34(d)(2) require that an owner use appropriate controls and practices to prevent spills and overflows.
  - c. A 1998 drip pad assessment conducted on behalf of Amelia Lumber recommended that hairline cracks observed on the eastern portion of the drip pad be repaired. Amelia Lumber did not submit a written plan within 2 years to the EPA Administrator to repair the cracks, as required by 40 CFR §§ 265.441(b) and 262.34(a)(iii).
  - d. The 1998 assessment indicated that the drip pad was last sealed in 1997. DEQ staff observed cracks and gaps on the drip pad during the October 2008 inspection. Amelia Lumber is required by 40 CFR §§ 265.443(a)(4)(i), 262.443(c), and 262.34(a)(iii) to maintain the drip pad free of cracks and gaps.
  - e. The Facility's documentation did not clearly indicate that treated wood is held on the drip pad until drippage ceases. Such records are required by 40 CFR §§ 265.443(k) and 262.34(a)(iii).
  - f. DEQ staff observed debris and dust from the CCA process and tire tracks on the drip pad. No records were available to document routine drip pad cleaning. Drip pad cleaning sufficient to remove accumulated residues of hazardous wastes and other materials is required by 40 CFR §§ 265.443(i) and 262.34(a)(iii). This section also requires that the date and time of each cleaning be noted in the Facility's operating log.
  - g. The Facility did not have a procedure in place to ensure cleaning of shoes for personnel exiting the drip pad. 40 CFR §§ 265.443(j) and 262.34(a)(iii) require drip pads to be operated and maintained in a manner to minimize tracking.
  - h. The Facility had not made arrangements with emergency response officials, as required by 40 CFR §§ 265.37(a) and 262.34(d)(4).
  - i. A Facility employee who signed a hazardous waste manifest dated March 4, 2008 did not have hazardous waste training, as required by 40 CFR § 262.34(d)(5)(iii).
  - j. One 55-gallon drum located in the satellite accumulation area on the drip pad and containing CCA-contaminated debris was open and unlabelled. According to 40 CFR § 265.173(a) and 40 CFR §§ 262.34(c)(1)(i) and (ii), containers must be labeled and closed during storage.
8. On August 24, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2009-08-PRO-603 to Amelia Lumber regarding the violations described in paragraph C.7, above.
  9. On September 22, 2009, Department staff met with representatives of Amelia Lumber to discuss the violations. Amelia Lumber indicated that the free liquids observed in the Sump and treatment areas were removed, and the liquid that could not be reused was sent off-site as hazardous waste. Amelia Lumber also indicated that the reason liquid had built up in this area was that the vacuum pump used to pump the liquids back into the process

had a bad seal. The pump and sump have since been replaced. Amelia Lumber representatives also indicated the areas of the drip pad with cracks had not been used to store lumber since 1998.

10. During the September 22, 2009 meeting, and subsequent thereto, representatives of Amelia Lumber submitted documentation to verify that the violations described in paragraphs C.7.b and C.7.c through C.7.j, above, have been corrected.
11. Based on the results of the October and December 2008 inspections, the September 22, 2009 meeting, and the documentation submitted on and after September 22, 2009, the Board concludes that Amelia Lumber violated 40 CFR §§ 265.191, 265.194(b), 265.441(b), 265.443(a)(4)(i), 265.443(c), 265.443(i), 265.443(j), 265.37(a), 262.34(d)(2), 262.34(d)(4), 262.34(a)(iii), 262.34(d)(5)(iii), 265.173(a) and 262.34(c)(1)(i) and (ii), as described in paragraph C.7, above, and referenced by 9 VAC 20-60-262 and -265.
12. In order for Amelia Lumber to complete its return to compliance, DEQ staff and representatives of Amelia Lumber have agreed to the Schedule of Compliance, which includes completion of an assessment of the drip pad and necessary follow-up activities. The Schedule is incorporated as Appendix A of this Order. Amelia Lumber also agrees that the drip pad will be closed in accordance with 40 CFR § 262.23(a)(1)(iii) and 40 CFR § 265.445 when Amelia Lumber ceases its use of the drip pad.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Amelia Lumber, and Amelia Lumber agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$37,663 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
October 1, 2010	\$3138.58
November 1, 2010	\$3138.58
December 1, 2010	\$3138.58
January 1, 2011	\$3138.58
February 1, 2011	\$3138.58
March 1, 2011	\$3138.58
April 1, 2011	\$3138.58
May 1, 2011	\$3138.58
June 1, 2011	\$3138.58
July 1, 2011	\$3138.58
August 1, 2011	\$3138.58
September 1, 2011	\$3139.17

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late, the Department shall have the right demand in writing full payment of the entire remaining balance under this order by Amelia Lumber, and the entire remaining balance of the civil charge shall be immediately due and owing. Amelia Lumber shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
4. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218
5. Amelia Lumber shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into [the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Amelia Lumber for good cause shown by Amelia Lumber, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Amelia Lumber admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies the findings of fact and conclusions of law contained herein.
4. Amelia Lumber consents to venue in the Circuit Court of Amelia County for any civil action taken to enforce the terms of this Order.

5. Amelia Lumber declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Amelia Lumber to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Amelia Lumber shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Amelia Lumber shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Amelia Lumber shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Amelia Lumber intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Amelia Lumber. Nevertheless, Amelia Lumber agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. Amelia Lumber petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Amelia Lumber.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Amelia Lumber from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Amelia Lumber and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Amelia Lumber certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Amelia Lumber to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Amelia Lumber.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, The Amelia Lumber Company, Incorporated voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Michael P. Murphy, Regional Director  
Department of Environmental Quality



The Amelia Lumber Company, Incorporated voluntarily agrees to the issuance of this Order.

Date: 7-27-10 By: [Signature], Pres  
(Person) (Title)  
The Amelia Lumber Company, Incorporated

Commonwealth of Virginia

~~City~~/County of Amelia

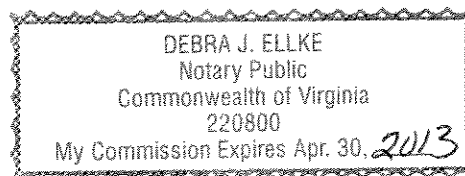
The foregoing document was signed and acknowledged before me this 27th day of  
July, 2010, by William L. Scott who is  
President of The Amelia Lumber Company, Incorporated, on behalf of  
the corporation.

[Signature]  
Notary Public

220800  
Registration No.

My commission expires: 4-30-2013

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. For the purposes of this section, the term “tank system” means the sump in front of the pressure tank and the treatment room, in which DEQ staff observed wash water from the drip pad during the October and December 2008 inspections. The term “drip pad” means the drip pad and the associated collection system.
2. Amelia Lumber shall obtain a written assessment of the integrity of the drip pad and the tank system, which is to be completed and certified by a Professional Engineer licensed in the Commonwealth of Virginia. The assessment for the tank system shall fulfill the requirements of 40 CFR § 265.191(b), at minimum, and the assessment of the drip pad shall, at minimum, determine if the drip pad meets all the requirements of 40 CFR § 265.443 (including, but not limited to, requirements for the associated collection system, and run-on or run-off control systems). Results of the assessments shall be submitted to DEQ **no later than September 1, 2010.**
3. Amelia Lumber shall repair and seal all cracks on the drip pad and complete all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of 40 CFR § 265.443. **No later than June 30, 2011,** Amelia Lumber shall submit a certification by a qualified Professional Engineer licensed in the Commonwealth of Virginia, that the drip pad meets the standards of 40 CFR § 265.443.
4. Amelia Lumber shall install secondary containment for the tank system that meets the requirements of 40 CFR § 265.193. **No later than January 31, 2011,** Amelia Lumber shall submit certification from a Professional Engineer licensed in the Commonwealth of Virginia that secondary containment has been installed in accordance with 40 CFR § 265.193.
5. **No later than October 1, 2010,** Amelia Lumber shall submit proposed locations for 2 additional groundwater monitoring wells. The new wells shall be placed in locations suitable to detect the presence of groundwater contamination caused by a release of hazardous waste from the tank system or drip pad. Amelia Lumber shall install the new wells no later than 90 days after DEQ approval of the well locations. Amelia Lumber shall monitor the wells quarterly for pH (standard units), dissolved zinc (µg/L), dissolved chromium (µg/L), dissolved copper (µg/L), and dissolved arsenic (µg/L) and shall submit the monitoring results no later than the 10<sup>th</sup> day of the month following the end of each sampling quarter (January 10, April 10, July 10, and October 10). Amelia Lumber shall incorporate these monitoring wells into the groundwater monitoring system required by its Virginia Pollutant Discharge Elimination System (“VPDES”) Permit by including them in its next application for reissuance of its VPDES Permit.

**6. Contact**

Unless otherwise specified in this Order, Amelia Lumber shall submit all requirements of Appendix A of this Order to:

Allison Dunaway  
Enforcement Manager  
VA DEQ – Piedmont Regional Office  
4949-A Cox Rd.  
Glen Allen, VA 23060  
Phone: (804) 527-5086  
Fax: (804) 527-5106  
Email: [Allison.Dunaway@deq.virginia.gov](mailto:Allison.Dunaway@deq.virginia.gov)



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**Piedmont Regional Office**  
**AUG 05 2010**  
**RECEIVED**

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